COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

MARK FRESIA,
Appellant

v.

D1-08-6

CITY OF PITTSFIELD,
Respondent

Appellant's Attorney:

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8 Beacon Street
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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, §§ 42[1] and 43, the Appellant, Mark Fresia (hereinafter "Fresia" or "Appellant"), is appealing the decision of the City of Pittsfield (hereinafter "City" or "Appointing Authority") to terminate him from the position of Water & Sewer System Maintenance Man in the Water Division of the Department of Public Works and Utilities (hereinafter "DPU"). The appeal was timely filed. A hearing was held on December 12, 2008 at Pittsfield City Hall. As no written notice was received from either party, the hearing

[1] The Appellant waived his appeal under Section 42 (due process issues) on the day of the hearing. That portion of the Appellant's appeal was related to the Appellant's argument that, at the time of the City's disciplinary hearing regarding his termination, he was unaware until the day of the hearing that one of the charges against him related to a private investigation regarding alleged personal use of City vehicles by DPU employees. After the City dropped

was declared private. One (1) CD was made of the hearing. All witnesses, with the exception of the Appellant, were sequestered. Both parties submitted post-hearing briefs.

FINDINGS OF FACT:

Based upon the eight (8) documents entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Matthew Inhelder, Water Superintendent, DPU, City of Pittsfield;
- Mike Bailey, Working Foreman, DPU, Water Division, City of Pittsfield;
- David Richardson; Maintenance Mechanic, DPU, Water Division, City of Pittsfield;
- Jaime Eichstedt, Senior Clerk / Typist, DPU, Water Division , City of Pittsfield;
- Kevin Swail, Compliance Inspector, DPU, Water Division, City of Pittsfield;
- Bruce Collingwood, Commissioner of Public Works and Utilities, City of Pittsfield;

For the Appellant:

- Mark Dubois, Water Mechanic, DPU, Water Division, City of Pittsfield;
- Paul McMahon, Water Sewer Maintenance Man, DPU, Water Division, City of Pittsfield;
- Mark Fresia, Appellant;

I make the following findings of facts:

1. The Appellant was a tenured civil service employee of the City at the time of his termination and had been employed there since 1996 when he was hired in the Water and Sewer Division of the Department of Public Works and Utilities. (Testimony of Appellant)
2. The Appellant served as the local union president from 2003 to 2007. (Testimony of Appellant)

Facts Regarding Appellant's Prior Discipline

3. On July 30, 1999, the Appellant received a written warning for insubordination. (See Fresia v. City of Pittsfield, 20 MCSR 561, 566 (2007) Finding 4.)

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that charge on the day of the hearing, the Appellant waived his Section 42 appeal and the just cause hearing regarding the remaining charges proceeded.

4. On December 14, 1999, the Appellant received a three-day suspension which was subsequently reduced to a one-day suspension for insubordination. (Id., Finding 5)
5. On February 29, 2000, the Appellant received a written warning for general misconduct. (Id., Finding 6)
6. On September 29, 2000, the Appellant received a written warning for insubordination and general misconduct. (Id., Finding 7)
7. On December 16, 2003, the Appellant received a written reprimand for insubordination. (Id., Finding 8)
8. On March 10, 2004, the Appellant received a five-day suspension for insubordination and harassment. (Id., Finding 9)
9. On July 26, 2004, the Appellant was demoted to the position of Water & Sewer System Maintenance Man, after having been promoted to Working Foreman, as a result of: 1) asking co-workers to sign a document giving him authorization to tape record their conversations; 2) making threats targeted at a co-worker; and 3) unprofessional behavior toward an employee. The demotion was upheld by the Civil Service Commission on September 20, 2007. (Id., Conclusion)

Facts Regarding Instant Appeal & City's Decision to Terminate the Appellant

10. The City's decision to terminate the Appellant rests on his prior disciplinary record and incidents that occurred on December 8, 2007 and December 11, 2007. (Exhibit 2)[2]

Incident on December 8, 2007

11. During the evening of December 8, 2007, there was an active water main break on Morningview Drive in Pittsfield that required a response from the DPU's Water Division. (Testimony of Inhelder, Bailey, Richardson and Appellant)
12. Michael Bailey was the Working Foreman that night and was the first person to receive the call regarding the water main break. In addition to being his coworker, Mr. Bailey is a personal friend of the Appellant. (Testimony of Bailey)
13. After receiving the call regarding the water main break, Mr. Bailey went to Morningview Drive to conduct an on-site inspection. He saw water running down the street, thus confirming that there was a water main break. (Testimony of Bailey)
14. Upon confirming that this was indeed a water main break, Mr. Bailey notified the City's Superintendent of Water and Sewer Maintenance, Matthew Inhelder. (Testimony of Bailey)
15. In order to conduct the repair, water needed to be shut off in the neighborhood. (Testimony of Inhelder)
16. Mr. Bailey began calling DPU employees that would be responsible for repairing the water main break in question. Mr. Bailey called the Appellant who agreed to come in and operate the back hoe. According to Mr. Bailey, the Appellant specifically requested this task as he was planning on playing Santa Claus at a holiday event the next morning and didn't want to get too dirty. (Testimony of Bailey)
17. Two other employees, including David Richardson, also agreed to come into work and assist with the water main break. Mr. Richardson was responsible for, among other things, operating the jack hammers needed to break the black top, driving a dump truck and serving

[2] As referenced in footnote 1, the City, on the day of the hearing before the Commission, dropped a charge related to alleged misuse of a city-owned vehicle after this Commissioner concluded that the Appellant was unaware of this charge

as a laborer. Mr. Richardson also described himself as a good friend of the Appellant. (Testimony of Bailey)

18. It is undisputed that at some point while the Appellant was operating the back hoe, he encountered a "shelf of ledge" that prevented him from digging any further with the back hoe. (Testimony of Bailey and Appellant)
19. Mr. Bailey directed the Appellant to move to a softer spot on the other side of the street and continue digging in an effort to get to the broken water main. (Testimony of Bailey and Appellant)
20. Both the Appellant and Mr. Bailey understood that by digging on the other side of the street that they ran the risk of temporarily damaging a sewer line. (Testimony of Bailey, Appellant and Inhelder)
21. As the water main break constituted an emergency and cutting directly through the ledge would require additional equipment and up to 1 – 2 days to complete, Mr. Bailey, as the working foreman, decided that this was the appropriate course of action to take. (Testimony of Bailey) Mr. Inhelder testified that Mr. Bailey instructed the Appellant to use care and to try and minimize the damage to the sewer line. (Testimony of Inhelder)
22. The Appellant disagreed with Mr. Bailey's order and the two men engaged in a vulgarity-laced exchange in the presence of Mr. Inhelder. (Testimony of Bailey, Appellant and Inhelder) According to Mr. Bailey, the Appellant initiated the verbal exchange. (Testimony of Bailey) Mr. Inhelder also testified that the Appellant initiated the exchange, telling Mr. Bailey, "this if [redacted] ridiculous; we should be working on the ledge; not [redacted] breaking the sewer line." Also according to Mr. Inhelder, Mr. Bailey responded in kind by stating words to the effect, "you'll dig where I want you to [redacted] dig; we can repair the sewer line

later." Mr. Inhelder told both the Appellant and Mr. Bailey to stop swearing in public and to keep their voices down. (Testimony of Inhelder)

23. After the verbal exchange, Mr. Bailey and Mr. Inhelder walked to a nearby manhole to make sure they were digging toward the correct line and the Appellant began digging on the other side of the street with the back hoe. (Testimony of Inhelder)

24. Shortly thereafter, the Appellant struck the sewer line in question, got off the back hoe and began walking off the worksite at Morningview Drive. (Testimony of Inhelder and Bailey) According to Mr. Inhelder, it was obvious that the Appellant had not used enough care to minimize damage to the sewer line. (Testimony of Inhelder)

25. Mr. Inhelder testified that as the Appellant began walking off the worksite, he called out the Appellant's name in a loud voice and asked him to return. When the Appellant kept walking, Mr. Inhelder called out to him again and ordered him to return to the worksite or be disciplined. The Appellant kept walking and never returned to the worksite. Mr. Inhelder testified that he is absolutely certain that he spoke loud enough for the Appellant to hear his order and that the Appellant simply chose to ignore him. (Testimony of Inhelder)

26. Mr. Bailey, a friend of the Appellant, testified before the Commission that although he doesn't recall whether Mr. Inhelder called out to the Appellant, he thought that the Appellant was just walking off the site to "cool off" and that he expected him to return and complete the job, which he never did. (Testimony of Bailey)

27. David Richardson, a laborer who was also present and who is also a good friend of the Appellant, testified that he saw the Appellant walk off the work site and that he heard Mr. Inhelder say something to the Appellant, but that he couldn't remember exactly what was said. (Testimony of Richardson)

28. The Appellant testified before the Commission that after he hit the sewer line, he shut the back hoe off, informed both Mr. Inhelder and Mr. Bailey that "this is all the hours that I can give you; I'm going home"; and proceeded to make the two hour walk back to the water division office where he had left his personal vehicle. The Appellant testified that he doesn't remember Mr. Inhelder ordering him to stay at the site. According to the Appellant, he had previously told Mr. Bailey that he "couldn't work all night" because he had plans to play Santa Claus the next morning at 11:00 A.M. (Testimony of Appellant)

29. In regard to the events of that night, I credit the testimony of Mr. Inhelder. He is the consummate professional and he had a good recall events. He testified in a straightforward, unhesitant manner and never sought to overreach in his testimony, both during his direct testimony and during cross-examination. Moreover, his recollection of what occurred that night was logical and rang true to me. (Testimony, demeanor of Inhelder)

30. I do not credit the testimony of the Appellant for the following reasons. The Appellant's testimony was contradictory to the credible testimony of Mr. Inhelder, and in key respects, was contradictory to the testimony of Mr. Bailey and Mr. Richardson. Mr. Bailey, the working foreman that night, never heard the Appellant say that he was done or that he was going home. Rather, Mr. Bailey believed that the Appellant was walking away to "cool off" and was surprised when the Appellant never returned to finish the job. Mr. Richardson also saw the Appellant walk off and does remember hearing Mr. Inhelder say something to the Appellant. Further, based on the fact that the Appellant walked off the site and began a two hour walk back to the Water Division office on a December night, I draw the reasonable inference that the Appellant stormed off the work site in anger as a result of his prior dispute with Mr. Bailey. (Testimony, demeanor of Appellant)

31. When the Appellant failed to return to the worksite, Mr. Bailey was required to call in another employee to complete the repair to the water main and restore water to the neighborhood. (Testimony of Inhelder and Bailey)

December 11, 2007 Incident

32. Jaime Eichstedt is a full-time Senior Clerk / Typist at the Wastewater Facility in Pittsfield. In December 2007, she was a serving as a Temporary Clerk / Typist in the same office performing dispatch and data entry duties. (Testimony of Eichstedt)

33. Ms. Eichstedt was a good witness and I fully credit her testimony regarding what occurred on December 11, 2007. She appears to be in her early 20's, has a very positive demeanor, and does not appear to me to be someone with heightened sensitivities toward normal workplace banter that might occur among employees of the DPW. In fact, Ms. Eichstedt testified that she grew up with brothers and male cousins and was accustomed to coarse language. (Testimony, demeanor of Eichstedt)

34. Ms. Eichstedt testified that on December 11, 2007, the Appellant was frustrated by the fact that he was unable to get in touch with Supervisor Charlie Hurley. According to Ms. Eichstedt, she heard the Appellant say on two occasions "I'm sick of this [redacted] place" over the radio while she was sitting in the office. She then saw the Appellant come into the Water Division office, "slam things around" and say " I can't stand this [redacted] place" and then threatened to turn the water off on Broadway. The Appellant then stormed out of the office and "peeled out" in his truck. (Testimony of Eichstedt)

35. Ms. Eichstedt, concerned that the Appellant would make good on his threat to shut the water on Broadway off, contacted Mr. Inhelder immediately to let him know he should intervene. (Testimony of Eichstedt)

36. Kevin Swail was also in the Water Division office on December 11, 2007. Mr. Swail is a compliance inspector and has worked for the City for the past 7 ½ years. Mr. Swail was also a good witness and I fully credit his testimony. He is a low key, soft-spoken individual with a southern drawl. His testimony was responsive, consistent and believable. He clearly did not enjoy testifying before the Commission and did not appear to have any ulterior motive for testifying against the Appellant. (Testimony, demeanor of Swail)
37. Mr. Swail testified that he saw the Appellant come into the office on the day in question and that the Appellant was trying to get a hold of Charlie Hurley. According to Mr. Swail, the Appellant began using the "f word" frequently and specifically remembered hearing the Appellant say "I'm sick of this [redacted] place" and then heard the Appellant leave and slam the door. (Testimony of Swail)
38. Mr. Swail immediately contacted Mr. Inhelder and told him that the Appellant "was out of control". Mr. Swail testified that the Appellant's behavior on the day in question was highly disruptive and inappropriate and that the Appellant's yelling of profanities caused him to end the phone call he was on when the Appellant entered the office. (Testimony of Swail)
39. Mark Dubois, a water mechanic for the past five (5) years, testified on behalf of the Appellant. He testified that he is a friend of the Appellant and has socialized with the Appellant at his home. Mr. Dubois recalled a conversation on the radio with the Appellant on the day in question that referenced Charlie Hurley, but he testified that he never heard the Appellant use any profanities. (Testimony of Dubois)
40. Paul McMahon, a water sewer maintenance man for the past thirteen (13) years, also testified on behalf of the Appellant. Mr. McMahon is a friend of the Appellant, socializes with him,

plays in a local softball league with him, and has known the Appellant's wife for an even longer time. (Testimony of McMahon)

41. Mr. McMahon testified that although he was able to hear the radio at all times during the alleged radio communication, that he never heard the Appellant use any profanities and that when he saw the Appellant around the time of the alleged incident he was "calm" and "not upset". (Testimony of McMahon)

42. The Appellant testified that he never used profanities over the radio on the day in question and that, in somewhat of a "thought out loud" manner, he said "I hate this [redacted] place" when he was leaving the water department office that day. He denied ever threatening to shut off the water on Broadway and described his demeanor that day as "average", stating that he was never angry that day about not being able to reach Charlie Hurley. (Testimony, demeanor of Appellant)

43. As referenced above, the version of events provided by the Appellant, Mr. McMahon and Mr. Dubois is in sharp contrast to the testimony of Ms. Eichstedt and Mr. Swail. For all the reasons referenced above, I found the testimony of Ms. Eichstedt and Mr. Swail to be credible. Therefore, I do not credit the testimony of Mr. McMahon, Mr. Dubois or the Appellant regarding this incident. Even when judged independently from the testimony of Ms. Eichstedt and Mr. Swail, the testimony of Mr. McMahon and Mr. Dubois did not ring true to me. Their testimony appeared to be geared toward portraying their friend and former coworker in the best light possible, even if it meant omitting events or conversations they may have seen or heard that day, as opposed to Ms. Eichstedt and Mr. Swail, who had no ulterior motive for testifying against the Appellant. (Testimony, demeanor of Eichstedt and Swail)

City's Decision to terminate the Appellant

44. Bruce Collingwood is the Commissioner of the DPU and serves as the Appointing Authority in the instant appeal. The Water Division is one of many divisions within the Department. (Testimony of Collingwood)

45. Mr. Collingwood testified that he was concerned that the two incidents involving the Appellant in December 2007 were consistent with his prior record of overall bad behavior and insubordination. His primary concern was that the Appellant's insubordination on December 8, 2007, when he walked off the site of the water main break repair, was a safety concern and unacceptable. Mr. Collingwood also testified that the Appellant's behavior on December 11, 2007 represented a continuation of his unacceptable workplace behavior including his continued use of profanities. (Testimony of Collingwood)

46. Mr. Collingwood testified that the two December incidents, coupled with the Appellant's prior discipline, warranted the Appellant's termination and that he would have terminated the Appellant based on those factors alone, even if hadn't considered the results of a private investigation involving the use of City-owned vehicles at the time of the termination. (Testimony of Collingwood)

47. Mr. Collingwood has led the DPU since 2002. He appears to be sincerely committed to the Department; its mission and the principles of progressive discipline. I found him to be highly credible, including his testimony that he would have terminated the Appellant based solely on the Appellant's lengthy record of prior discipline coupled with the two (2) incidents that occurred in December 2007. (Testimony, demeanor of Collingwood).

48. The Appellant was terminated on January 4, 2008 after a disciplinary hearing was conducted by the City on January 3, 2008. (Exhibit 2)

49. The Appellant filed a timely appeal of the City's decision with the Civil Service Commission on January 9, 2008. (Appellant's Discipline Appeal Form)

CONCLUSION:

G.L. c. 31, § 43, provides:

> "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006) and cases cited. The role of the Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, 792 N.E.2d 711, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, 721 N.E.2d 928, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477, 648 N.E.2d 1312 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules

of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, 133 N.E.2d 489 (1956).

"The commission's task…is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'", which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983) and cases cited.

The Appellant in this case has a lengthy disciplinary record, including verbal and written warnings, suspensions and a recent demotion, much of which is related to insubordination, anger management issues and overall unacceptable behavior in the workplace.

Unfortunately, the Appellant, despite being on thin ice as a result of his prior discipline, continued to display the same bad behavior on two occasions in December 2007. For all of the reasons stated in the findings, I conclude that on December 8, 2007, the Appellant, in a fit of anger, stormed off the worksite at Morningview Drive in the middle of a water main repair job for which he was responsible for operating the back hoe. Further, I conclude that the Appellant ignored the order of the Water Superintendent to stay at the worksite. The Appellant's behavior impeded the Department's ability to promptly repair the water main leak thus adversely affecting the public interest.

Also for all of the reasons referenced in the findings, I conclude that on December 11, 2007 the Appellant behaved inappropriately when he caused a disturbance in the office of the Water Division, slamming things around, repeatedly using vulgarities, slamming the office door and threatening to shut off water to residents and businesses on Broadway in Pittsfield. The Appellant has been disciplined numerous times for similar types of unacceptable behavior in the past.

I base these conclusions largely on the credible testimony of the Appointing Authority witnesses, all of whom were good witnesses who did not appear to have any ulterior motive for testifying against the Appellant. It is the function of the hearing officer to determine the credibility of the testimony presented before him. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep't of Social Services, 439 Mass.

766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing); Connor v. Connor, 77 A. 2d. 697 (1951) (the opportunity to observe the demeanor and appearance of witnesses becomes the touchstone of credibility).

Having determined that it was appropriate to discipline the Appellant for his behavior on December 8, 2007 and December 11, 2007, the Commission must determine if the City was justified in the level of discipline imposed, which, in this case, was termination.

The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006) and cases cited.

"The 'power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.' " Town of Falmouth v. Civil Service Comm'n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation" E.g., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006).

As referenced above, the City, as part of its local disciplinary hearing regarding this matter, also concluded, based on a private investigation, that the Appellant violated workplace rules related to the use of City-owned vehicles. The City dropped that charge during the hearing before the Civil Service Commission and relied on the Appellant's prior discipline, coupled with the two (2) December 2007 incidents, to justify terminating the Appellant.

Based on the Appellant's prior disciplinary history and his continuation of similar bad behavior, I conclude that the City had reasonable justification for terminating his employment. Further, the Appellant failed to provide any evidence that employees who had engaged in repeated bad behavior similar to the Appellant were treated any differently. Finally, although the Appellant previously served as the local union president, there was no evidence that the City's decision related to his union involvement or that there were any inappropriate motivations or objectives that would warrant the Commission modifying the discipline imposed upon him.

For all of the above reasons, the Appellant's appeal under Docket No. D1-08-6 is hereby ***dismissed***.

Civil Service Commission

_____
Christopher C. Bowman
Chairman

By a vote of the Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on March 12, 2009.

A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Michael Maccaro, Esq. (for Appellant)
Fernand Dupere, Esq. (for Appointing Authority)/